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FROM: TOKYO

TO: Secretary of State

NO: 452, AUGUST 16

DEPARTMENT OF STATE
L/T
AUG 16 1962
OFFICE OF THE LEGAL ADVISER

FCN TREATY

EMBTEL 402.

I TOOK OCCASION OF MEETING YESTERDAY WITH VICE MINISTER TAKEUCHI TO REITERATE SERIOUS CONCERN OF USG WITH REPORTED INTENTION OF GOJ TO REQUEST RENEGOTIATION OF FCN TREATY. I REFERRED TO POINTS IN TALKING PAPER GIVEN BY DEPARTMENT TO AMBASSADOR ASAKAI, STRESSING THAT JAPAN'S EXTRA-ORDINARY RECORD OF ECONOMIC GROWTH IN POSTWAR PERIOD WAS IN PART RELATED TO INVESTMENTS BY U.S. FIRMS AND ASSOCIATED TECHNICAL AND LICENSING AGREEMENTS. I EXPLAINED THAT IT WOULD BE DIFFICULT FOR AMERICAN BUSINESS COMMUNITY TO ACCEPT NEW RESTRICTIONS ON AMERICAN INVESTMENT IN JAPAN IN VIEW THIS RECORD AND EXPRESSED HOPE THAT GOJ WOULD FIND IT IN JAPAN'S OWN INTEREST TO CONTINUE TO INVITE FOREIGN INVESTMENT WHICH WOULD CONTRIBUTE TO FURTHER GROWTH.

TAKEUCHI SAID GOJ AWARE OF OUR CONCERN AND STRESSED THAT WHILE TALKS WERE GOING ON IN ONE OF TWO GOVERNMENT AGENCIES, THE MATTER HAD NOT YET BEEN PUT UP TO CABINET OR VICE MINISTERIAL LEVEL. AS RESULT OF EXPRESSIONS U.S. CONCERN, FONOFF HAD DECIDED TO TACKLE MATTER QUICKLY, HOPING TO ARRIVE AT SOME DECISION BEFORE SECOND MEETING OF JOINT ECON COM IN DECEMBER. TAKEUCHI POINTED OUT HOWEVER THAT OCTOBER 30 WAS ONLY THE FIRST DATE ON WHICH EITHER PARTY COULD GIVE NOTICE OF INTENTION TO RENEGOTIATE AND IT WAS QUITE POSSIBLE GOJ WOULD NOT ARRIVE AT DECISION UNTIL SOME TIME LATER.

TAKEUCHI CONCEDED THERE WAS "SOME ANXIETY" IN JAPANESE BUSINESS COMMUNITY OVER PROSPECT OF EVEN LARGER INFLOW OF

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AMERICAN INVESTMENT "AFTER" LIBERALIZATION AND AFTER JAPAN BECOMES ARTICLE VIII COUNTRY UNDER IMF AGREEMENT. MOREOVER OTHER COUNTRIES WOULD INSIST ON SIMILAR TREATMENT FOR INVESTMENTS IN JAPAN BY THEIR NATIONALS UNDER IMF PROVISIONS. JAPANESE ECONOMY CHARACTERIZED IN MANY SECTORS BY LARGE NUMBERS OF SMALL ENTERPRISES WHOSE PROPRIETORS CONDUCT BUSINESS IN TRADITIONAL WAYS INHERITED FROM FATHERS. SMALL ENTERPRISES FEAR THAT UNRESTRICTED FOREIGN INVESTMENT WOULD RESULT IN BANKRUPTCY FOR MANY FIRMS, AND TAKEUCHI COMMENTED THAT WHILE THIS MIGHT BE GOOD FROM LONG-RANGE ECONOMIC VIEWPOINT IT WOULD CONSTITUTE BIG HEADACHE FOR GOJ.

TAKEUCHI AGREED CAPITAL IMPORTS WERE GOOD THING AND THAT COMPETITION IN LONG RUN BENEFITTED JAPANESE ECONOMY. HOWEVER, HE ARGUED THAT FOREIGN INVESTMENTS MUST BE REGULATED TO PREVENT SUDDEN INFLUXES OF FOREIGN CAPITAL ACCOMPANIED BY SOPHISTICATED MANAGEMENT AND TECHNICAL KNOWHOW WHICH WOULD DISRUPT LESS ADVANCED JAPANESE INDUSTRIES AND CAUSE SUFFERING TO STOCKHOLDERS AND EMPLOYEES. EVEN THOUGH SUCH SUFFERING WOULD BE TRANSITIONAL IT WOULD BE NEVERTHELESS REAL AND BUSINESS COMMUNITY WOULD INSIST UPON PROTECTION.

ASKED WHETHER JAPANESE CONCERN ABOUT FCN TREATY MOTIVATED BY FEAR OF POLITICAL DOMINATION FOLLOWING ON FOREIGN INVESTMENT, TAKEUCHI SAID THIS NOT THE CASE AND GOJ HELD NO SUCH OLD-FASHIONED VIEW. HE WENT ON, HOWEVER, TO REFER TO CANADIAN EXPERIENCE AND WIDESPREAD FEARS IN CANADA OF DOMINATION BY AMERICAN CAPITAL. THIS EXAMPLE HE SAID WAS EMBARRASSING TO GOJ IN DEALING WITH THIS PROBLEM.

FONOFF WOULD APPRECIATE SUPPLEMENTARY INFORMATION TO STATEMENT IN U.S. TALKING PAPER THAT INVESTMENT PROVISIONS WERE STANDARD FOR U.S. TREATIES WITH PRINCIPAL FREE WORLD INDUSTRIAL STATES. SAID CONSIDERABLE SKEPTICISM IN GOJ AGENCIES ON THIS POINT. SPECIFICALLY, FONOFF WOULD LIKE TO KNOW WHICH U.S. COMMERCIAL TREATIES CONTAIN PROVISIONS IDENTICAL TO OR SUBSTANTIALLY SAME AS ARTICLE VII AND ARTICLE XII OF U.S.-JAPAN TREATY. FONOFF HAD IMPRESSION U.S. TREATIES WITH

NETHERLANDS AND ISRAEL WERE IDENTICAL TO JAPAN IN THESE RESPECTS BUT NOT WITH U.K., GERMANY, ITALY AND FRANCE. THERE IS FURTHER IMPRESSION THAT OUR TREATY WITH JAPAN IS NOT A "STANDARD TYPE" BUT IN FACT A NEW MODEL AND JAPANESE WONDER WHY THEY SHOULD BE ASKED ACCEPT NEW MODEL TREATY PROVISIONS. IN THIS CONNECTION TAKEUCHI INQUIRED WHETHER IN CASES WHERE SPECIFIC TREATY PROVISIONS DIFFER, INTERPRETATION RESULTED IN TREATMENT OF FOREIGN INVESTMENT SUBSTANTIALLY SIMILAR TO TREATMENT PROVIDED FOR UNDER U.S.-JAPAN TREATY.

SINCE FONOFF APPEARS TO BE EMBARKING ON SERIOUS STUDY THIS PROBLEM, AND WILL NO DOUBT HAVE TO DEFEND ANY DECISION NOT TO RENEGOTIATE TREATY AGAINST STRONG PRESSURES FROM MITI, BUSINESS COMMUNITY AND DIET, I BELIEVE WE SHOULD SUPPLY FONOFF WITH REQUESTED INFORMATION PROMPTLY.

REISCHAUER

JTC